

Auto dealers incur Automobile Renting Occupation Tax liability when those dealers provide vehicles to repair customers for short-term periods and are compensated by manufacturers. See 35 ILCS 155/1 et seq. (This is a GIL.)

January 12, 1999

Dear Mr. Xxxxx:

It has been brought to our attention that personnel from the Department's Collection Division have recently approached your company about filing Automobile Renting Occupation Tax returns for periods in which no returns have been filed (open periods). You have requested that this collection activity be suspended pending the outcome of a dispute between your company and the Department.

We understand that the dispute centers on your providing vehicles to repair customers and being paid for doing so by a vehicle manufacturer. As you know, the Department's position is that automobile dealers incur Automobile Renting Occupation Tax liability when they provide vehicles for short-term periods to customers whose vehicles are being repaired under a manufacturer's extended warranty and are then compensated by the manufacturer for so doing. We recognize that you do not agree with the Department's position and that you are currently contesting it in an administrative hearing.

Please be advised that so long as you are in the process of contesting the liability on this particular issue in the Department's Office of Administrative Hearings or through an appeal of a Department final administrative decision under the Administrative Review Act, the Department will suspend collection activity on the open periods referenced above. However, please understand that if the Department prevails on this issue, it will be required to consider all tax, penalty and interest to be due for these open periods.

Since you are litigating this matter, we are not in a position to advise you. However, you may wish to consider that if the Department's position on this question is upheld, the Uniform Penalty and Interest Act would require the Department to impose penalties for the late filing or nonfiling of returns in addition to the penalties for late payment. See, 36 ILCS 735/3-3.

Very truly yours,

George Sorensen
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